

To: Buffo, Corey[Buffo.Corey@epa.gov]
Cc: Nalven, Heidi[Nalven.Heidi@epa.gov]
From: Willis-Hilbrich, Sara
Sent: Fri 4/17/2015 7:30:05 PM
Subject: WY Trespass Law for Betsy
[SF0012.pdf](#)
[SF0012.pdf](#)

Hi Betsy,

Ex. 5 - Deliberative

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From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: April 12, 2015 at 10:48:03 AM EDT
To: "Kopocis, Ken" <Kopocis.Ken@epa.gov>, "Gilinsky, Ellen" <Gilinsky.Ellen@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Southerland, Elizabeth" <Southerland.Elizabeth@epa.gov>, "Sawyers, Andrew" <Sawyers.Andrew@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>
Subject: FW: Wyoming law restricting access to public and private lands for water sampling

Ex. 5 - Attorney Client

From: Shenkman, Ethan
Sent: Friday, April 10, 2015 10:37 AM
To: Mitchell, Stacey; Neugeboren, Steven; Siciliano, CarolAnn; Simons, Andrew
Subject: FW: Wyoming Ag-Gag law

Ex. 5 - Attorney Client

Thanks,

Ethan

From: Pidot, Justin [<mailto:jpidot@law.du.edu>]
Sent: Friday, April 10, 2015 10:04 AM
To: Shenkman, Ethan
Subject: Wyoming Ag-Gag law

Dear Ethan,

wanted to touch base with you about an issue that has arisen in Wyoming that directly targets citizen participation in the state's water quality program. Last month Wyoming enacted a new trespass law targeting citizen scientists and public interest organizations. The law makes it a crime to collect "resource data" from public and private land within the state, including all lands managed by the Department of Interior. Without express written permission from BLM, an individual taking a water sample, measuring range health, or perhaps even taking a picture of a cattle herd grazing outside an allotment now faces up to one year in jail and a one thousand dollar fine.

The law is clearly targeted at the organization Western Watersheds Project (which I am currently defending pro bono in a SLAPP lawsuit brought by ranchers). WWP has a staff member who has been collecting water samples on BLM land, samples which indicate significant exceedances of the state's water quality standard for e. coli bacteria. Wyoming has already delayed submitting its 2014 303(d) list to EPA to avoid listing additional waters, and this is an effort to stop the flow of information entirely.

This is the most aggressive state law directed at preventing the public from obtaining information about the health of public lands or agricultural practices generally of which I am aware. It strikes me as deeply problematic legally but also from a policy perspective as the state has essentially foreclosed any individual citizen volunteers from augmenting federal monitoring activities.

I suspect that a lawsuit will inevitably follow, but I wanted to get this issue on EPA's radar screen and urge the agency to consider either requesting DOJ to file a lawsuit on the agency's behalf (as this law directly interferes with the statutory schemes implemented by EPA) and/or 2) urge BLM and other federal land management agencies to issue a blanket authorization for citizen monitoring activities on federal land not otherwise prohibited by federal law.

If you have time, my colleague and co-counsel professor Justin Marceau and I would appreciate the chance to talk with you about this. We understand, of course, that your schedule is significantly constrained.

Here are links to the two bills passed (one civil, one criminal). The relevant provisions apply to "open lands," defined as any land outside of a town boundary. Separate provisions apply to "private open lands."

Criminal: <https://legiscan.com/WY/text/SF0012/id/1151882/Wyoming-2015-SF0012-Enrolled.pdf>

Civil: <https://legiscan.com/WY/text/SF0080/id/1155438/Wyoming-2015-SF0080-Enrolled.pdf>

All the best,

Justin

Justin Pidot

Assistant Professor

University of Denver Sturm College of Law

<http://ssrn.com/author=1173128>